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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

CENTEX HOMES, a Nevada general
partnership,

Plaintiff,

v.

FINANCIAL PACIFIC INSURANCE
COMPANY, a California corporation; FIRST
SPECIALTY INSURANCE
CORPORATION, a Missouri corporation
GREENWICH INSURANCE COMPANY, a
Connecticut corporation; INTERSTATE
FIRE & CASUALTY COMPANY, an Illinois
corporation; LEXINGTON INSURANCE
COMPANY, a Delaware corporation;
NAVIGATORS SPECIALTY INSURANCE
COMPANY, a New York corporation;
SCOTTSDALE INDEMNITY COMPANY,
an Ohio corporation; ST. PAUL FIRE &
MARINE INSURANCE COMPANY, a
Connecticut corporation; NATIONAL FIRE
& MARINE INSURANCE COMPANY, a
Nebraska corporation; IRONSHORE
SPECIALTY INSURANCE COMPANY, an
Arizona corporation; and ZURICH
AMERICAN INSURANCE COMPANY, a
New York corporation,

Defendants.

Case No.:

CENTEX HOMES' COMPLAINT FOR:

(1) BREACH OF CONTRACT;

**(2) BREACH OF THE IMPLIED
COVENANT OF GOOD FAITH AND
FAIR DEALING;**

**(3) VIOLATIONS OF NEVADA'S
UNFAIR CLAIMS SETTLEMENT
PRACTICES ACT, NEV. REV. STAT.
ANN. § 686A.310; AND**

**(4) DECLARATORY RELIEF—DUTY TO
DEFEND.**

JURY DEMAND

1 Plaintiff Centex Homes (“Centex”) alleges as follows:

2 **PARTIES**

3 1. At all times mentioned herein, Centex was and is a Nevada general partnership
4 with its principal place of business in Atlanta, Georgia. The partners of Centex Homes are (a)
5 Centex Real Estate Corporation, (b) Nomas LLC and (c) Centex International II, LLC. Centex is,
6 and at all relevant times was, authorized to do and doing business in the State of Nevada.

7 2. At all relevant times, Nomas LLC was and is a Nevada limited liability company
8 with its principal place of business in Atlanta, Georgia.

9 3. At all relevant times herein, Centex International II, LLC, was and is a Nevada
10 limited liability company with its principal place of business in Atlanta, Georgia.

11 4. At all relevant times, the sole member of Centex LLC was and is Centex Home
12 Corporation, which is a Michigan Corporation with its principal place of business in Atlanta,
13 Georgia.

14 5. At all relevant times, Centex Real Estate Corporation (“Centex RE Corp.”) was and
15 is a Nevada corporation with its principal place of business in Atlanta, Georgia.

16 6. Plaintiff is informed and believes, and on that basis alleges, that Defendant
17 Financial Pacific Insurance Company (“Financial Pacific”) at all relevant times was and is a
18 California corporation with its principal place of business in Iowa. Upon information and belief,
19 Financial Pacific is and was at all relevant times eligible to do and doing business as an insurer in
20 the State of Nevada.

21 7. Plaintiff is informed and believes, and on that basis alleges, that Defendant First
22 Specialty Insurance Corporation (“First Specialty”) at all relevant times was and is a Missouri
23 corporation with its principal place of business in Missouri. Upon information and belief, First
24 Specialty is and was at all relevant times eligible to do and doing business as an insurer in the
25 State of Nevada.

26 8. Plaintiff is informed and believes, and on that basis alleges, that Defendant
27 Greenwich Insurance Company (“Greenwich”) at all relevant times was and is Delaware
28 corporation with its principal place of business in Connecticut. Upon information and belief,

1 Greenwich is and was at all relevant times eligible to do and doing business as an insurer in the
2 State of Nevada.

3 9. Plaintiff is informed and believes, and on that basis alleges, that Defendant
4 Interstate Fire & Casualty Company (“Interstate”) at all relevant times was and is an Illinois
5 corporation with its principal place of business in Illinois. Upon information and belief, Interstate
6 is and was at all relevant times eligible to do and doing business as an insurer in the State of
7 Nevada.

8 10. Plaintiff is informed and believes, and on that basis alleges, that Defendant
9 Lexington Insurance Company (“Lexington”) at all relevant times was and is a Delaware
10 corporation with its principal place of business in Massachusetts. Upon information and belief,
11 Lexington is and was at all relevant times eligible to do and doing business as an insurer in the
12 State of Nevada.

13 11. Plaintiff is informed and believes, and on that basis alleges, that Defendant
14 Navigators Specialty Insurance Company (“Navigators”) at all relevant times was and is New
15 York corporation with its principal place of business in New York. Upon information and belief,
16 Navigators is and was at all relevant times eligible to do and doing business as an insurer in the
17 State of Nevada.

18 12. Plaintiff is informed and believes, and on that basis alleges, that Defendant
19 Scottsdale Insurance Company (“Scottsdale”) at all relevant times was and is an Ohio corporation
20 with its principal place of business in Ohio. Upon information and belief, Scottsdale is and was at
21 all relevant times eligible to do and doing business as an insurer in the State of Nevada.

22 13. Plaintiff is informed and believes, and on that basis alleges, that Defendant St. Paul
23 Fire & Marine Insurance Company (“St. Paul”) at all relevant times was and is a Connecticut
24 corporation with its principal place of business in Connecticut. Upon information and belief, St.
25 Paul is and was at all relevant times eligible to do and doing business as an insurer in the State of
26 Nevada.

27 14. Plaintiff is informed and believes, and on that basis alleges, that Defendant
28 National Fire & Marine Insurance Company (“National Fire”) at all relevant times was and is a

1 Nebraska corporation with its principal place of business in Nebraska. Upon information and
 2 belief, National Fire is and was at all relevant times eligible to do and doing business as an insurer
 3 in the State of Nevada.

4 15. Plaintiff is informed and believes, and on that basis alleges, that Defendant
 5 Ironshore Specialty Insurance Company (“Ironshore”) at all relevant times was and is an Arizona
 6 corporation with its principal place of business in Massachusetts. Upon information and belief,
 7 Ironshore is and was at all relevant times eligible to do and doing business as an insurer in the
 8 State of Nevada.

9 16. Plaintiff is informed and believes, and on that basis alleges, that Defendant Zurich
 10 American Insurance Company (“Zurich”) at all relevant times was and is a New York corporation
 11 with its principal place of business in Illinois. Upon information and belief, Zurich is and was at
 12 all relevant times eligible to do and doing business as an insurer in the State of Nevada.

13 **JURISDICTION AND VENUE**

14 17. This Court has original jurisdiction over this action founded on diversity of
 15 citizenship pursuant 28 U.S.C. § 1332, because the matters in controversy exceed \$75,000.00,
 16 exclusive of interest and costs, and because complete diversity exists between Centex and
 17 Defendants.

18 18. Venue is proper in this Court in accordance with 28 U.S.C. § 1391.

19 **GENERAL ALLEGATIONS**

20 **The Miramonte & Silver Terrace Developments**

21 19. Centex is a developer and homebuilder that participated in the construction of two
 22 residential development known as Miramonte and Silver Terrace (the “Developments”), located in
 23 Reno, Nevada.

24 20. Construction of the Miramonte development began in 2006 and continued through
 25 2009.

26 21. Construction of the Silver Terraces development began in 2005 and continued
 27 through 2007.

28 22. Centex performed no work on the Developments; subcontractors performed all of

1 the work.

2 23. All Seasons Glass (“All Seasons”) contracted with Centex to, among other things,
3 supply and install windows in homes in the Developments.

4 24. Advanced Countertop Design, Inc. (“Advanced Countertop”) contracted with
5 Centex to, among other things, supply and install kitchen and bathroom countertops on the homes
6 in the Developments.

7 25. American Woodmark Corporation (“American”) contracted with Centex to, among
8 other things, supply and install cabinets in homes in the Developments.

9 26. Cavallero Heating & Air Conditioning, Inc., (“Cavallero”) contracted with Centex
10 to, among other things, supply and install HVAC systems in homes at the Development.

11 27. Dan Mills Construction, Inc. (“Mills”) contracted with Centex to, among other
12 things, perform framing work on the homes in the Developments.

13 28. Ira Hanson & Sons Plumbing & Heating (“Hanson”) contracted with Centex to,
14 among other things, install plumbing systems in the homes in the Developments.

15 29. J&L Windows, Inc. (“J&L”) contracted with Centex to, among other things, supply
16 and install windows in the homes in the Developments.

17 30. JP Construction Company (“JP”) contracted with Centex to, among other things,
18 install concrete foundations in the Developments.

19 31. Pinnacle Drywall & Stucco (“Pinnacle”) contracted with Centex to, among other
20 things, install drywall in the homes in the Developments.

21 32. Premier Landscaping (“Premier”) contracted with Centex to, among other things,
22 perform landscaping and landscaping-related work at homes in the Developments.

23 33. Republic Electric, Inc. (Republic”) contracted with Centex to, among other things,
24 install electrical systems in homes in the Developments.

25 34. Riddo Construction Co., Inc. (“Riddo”) contracted with Centex to, among other
26 things, perform finish carpentry in homes in the Developments.

27 35. Scarecrow Lath & Plaster, Inc. (“Scarecrow”) contracted with Centex to, among
28 other things, install stucco systems in the homes in the Developments.

36. Sierra General Contractors (“Sierra”) contracted with Centex to perform framing work on the homes in the Developments.

37. Silverado Excavating (“Silverado”) contracted with Centex to perform excavating and fine grading work on the Developments.

38. Sunworld Landscape, LLC (“Sunworld”) contracted with Centex to perform landscaping and landscaping-related work at homes in the Developments.

The Financial Pacific Policies

39. Pinnacle, Riddo, Scarecrow and Sierra each performed work on homes at the Developments pursuant to written subcontracts that each of them entered into with Centex.

40. Each subcontract required Riddo, Sierra, Scarecrow, and Pinnacle to maintain commercial general liability insurance, and to name “Centex Homes, a Nevada general partnership, Centex Real Estate Corporation, a Nevada corporation, and the owner of the Site if other than Centex Homes, their respective officers, directors, partners, members and employees, as additional insureds” under those insurance policies.

41. Riddo, Sierra, Scarecrow and Pinnacle obtained the following commercial general liability policies from Financial Pacific (“the Financial Pacific Policies”):

Insurer	Policy Number	Policy Period	Named Insured	Additional Insured
Financial Pacific	170546B	06/01/05 – 06/01/06	Pinnacle	Centex
Financial Pacific	165937C	07/22/02 – 07/22/07	Riddo	Centex
Financial Pacific	163655F	06/01/06 – 06/01/07	Sierra	Centex
Financial Pacific	166133C	09/01/04 – 09/01/05	Scarecrow	Centex
Financial Pacific	166133D	09/01/05 – 09/01/06	Scarecrow	Centex

42. The Financial Pacific Policies were endorsed to cover Centex as an “additional insured” with respect to liability arising out of each named insured’s work.

43. The Financial Pacific Policies require Financial Pacific to defend Centex against claims that create potential liability for covered property damage or bodily injury.

44. The Financial Pacific Policies were in effect during Pinnacle's, Ridco's, Scarecrow's and Sierra's operations at the Developments.

The First Specialty Policies

45. J&L performed work on homes at the Developments pursuant to written subcontracts that each of them entered into with Centex.

46. The subcontract required J&L to maintain commercial general liability insurance, and to name "Centex Homes, a Nevada general partnership, Centex Real Estate Corporation, a Nevada corporation, and the owner of the Site if other than Centex Homes, their respective officers, directors, partners, members and employees, as additional insureds" under those insurance policies.

47. J&L obtained the following commercial general liability policies from First Specialty ("the First Specialty Policies"):

Insurer	Policy Number	Policy Period	Named Insured	Additional Insured
First Specialty	IRG57018	09/20/04 – 09/20/05	J&L	Centex
First Specialty	IRG57018-1	09/20/05 – 09/20/06	J&L	Centex

48. The First Specialty Policies were endorsed to cover Centex as an "additional insured" with respect to liability arising out of each named insured's work.

49. The First Specialty Policies require First Specialty to defend Centex against claims that create potential liability for covered property damage or bodily injury.

50. The First Specialty Policies were in effect during J&L's operations at the Developments.

The Greenwich Policies

51. American Woodmark performed work on homes at the Developments pursuant to written subcontracts that each of them entered into with Centex.

52. The subcontract required American Woodmark to maintain commercial general liability insurance, and to name "Centex Homes, a Nevada general partnership, Centex Real Estate Corporation, a Nevada corporation, and the owner of the Site if other than Centex Homes, their

1 respective officers, directors, partners, members and employees, as additional insureds” under
2 those insurance policies.

3 53. American Woodmark obtained the following commercial general liability policies
4 from Greenwich (“the Greenwich Policies”):

Insurer	Policy Number	Policy Period	Named Insured	Additional Insured
Greenwich	RGG9437011-02	03/01/06 – 03/01/07	American Woodmark	Centex
Greenwich	RGG943701103	03/01/07 – 03/01/08	American Woodmark	Centex
Greenwich	RGG943701104	03/01/08 – 03/01/09	American Woodmark	Centex
Greenwich	RGG9437011	03/01/09 – 03/01/10	American Woodmark	Centex

11 54. The Greenwich Policies were endorsed to cover Centex as an “additional insured”
12 with respect to liability arising out of each named insured’s work.

13 55. The Greenwich Policies require Greenwich to defend Centex against claims that
14 create potential liability for covered property damage or bodily injury.

15 56. The Greenwich Policies were in effect during American Woodmark’s operations at
16 the Development.

17 **The Interstate Policies**

18 57. Dan Mills performed work on homes at the Developments pursuant to written
19 subcontracts that each of them entered into with Centex.

20 58. The subcontract required Dan Mills to maintain commercial general liability
21 insurance, and to name “Centex Homes, a Nevada general partnership, Centex Real Estate
22 Corporation, a Nevada corporation, and the owner of the Site if other than Centex Homes, their
23 respective officers, directors, partners, members and employees, as additional insureds” under
24 those insurance policies.

25 59. Dan Mills obtained the following commercial general liability policies from
26 Interstate (“the Interstate Policies”):

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Insurer	Policy Number	Policy Period	Named Insured	Additional Insured
Interstate	AGL01400161	04/09/05 – 09/09/06	Dan Mills	Centex
Interstate	SGL01000082	04/09/06 – 10/09/07	Dan Mills	Centex

60. The Interstate Policies were endorsed to cover Centex as an “additional insured” with respect to liability arising out of each named insured’s work.

61. The Interstate Policies require Interstate to defend Centex against claims that create potential liability for covered property damage or bodily injury.

62. The Interstate Policies were in effect during Dan Mills’ operations at the Developments.

The Lexington Policies

63. Cavallero, Hanson, Republic, and Sunworld each performed work on homes at the Developments pursuant to written subcontracts that each of them entered into with Centex.

64. Each subcontract required Cavallero, Hanson, Republic, and Sunworld to maintain commercial general liability insurance, and to name “Centex Homes, a Nevada general partnership, Centex Real Estate Corporation, a Nevada corporation, and the owner of the Site if other than Centex Homes, their respective officers, directors, partners, members and employees, as additional insureds” under those insurance policies.

65. Cavallero, Ira Hanson, Republic, and Sunworld obtained the following commercial general liability policies from Lexington (“the Lexington Policies”):

Insurer	Policy Number	Policy Period	Named Insured	Additional Insured
Lexington	2606688	03/01/05 – 03/01/06	Cavallero	Centex
Lexington	6119295	03/01/06 – 03/01/07	Cavallero	Centex
Lexington	1144317	04/01/05 – 04/01/06	Ira Hanson	Centex
Lexington	1144469	05/01/05 – 05/01/06	Republic	Centex
Lexington	8762037	05/31/06 – 05/31/07	Republic	Centex
Lexington	8762223	05/31/07 – 05/31/08	Republic	Centex
Lexington	1141189	06/04/02 – 06/04/03	Sunworld	Centex

Insurer	Policy Number	Policy Period	Named Insured	Additional Insured
Lexington	1142167	06/04/03 – 06/04/04	Sunworld	Centex
Lexington	1143370	06/04/04 – 06/04/05	Sunworld	Centex
Lexington	1144579	06/04/05 – 06/04/06	Sunworld	Centex
Lexington	8762039	06/04/06 – 06/04/07	Sunworld	Centex

66. The Lexington Policies were endorsed to cover Centex as an “additional insured” with respect to liability arising out of each named insured’s work.

67. The Lexington Policies require Lexington to defend Centex against claims that create potential liability for covered property damage or bodily injury.

68. The Lexington Policies were in effect during Cavallero’s, Ira Hanson’s, Republic’s, and Sunworld’s operations at the Developments.

The Navigators Policies

69. J&L and Silverado performed work on homes at the Developments pursuant to written subcontracts that each of them entered into with Centex.

70. The subcontract required J&L to maintain commercial general liability insurance, and to name “Centex Homes, a Nevada general partnership, Centex Real Estate Corporation, a Nevada corporation, and the owner of the Site if other than Centex Homes, their respective officers, directors, partners, members and employees, as additional insureds” under those insurance policies.

71. J&L and Silverado obtained the following commercial general liability policies from Navigators (“the Navigators Policies”):

Insurer	Policy Number	Policy Period	Named Insured	Additional Insured
Navigators	SF06CGL003096-01	06/08/07 – 11/13/07	J&L	Centex
Navigators	SF06CGL003096-00	06/08/06 – 06/08/07	J&L	Centex
Navigators	OC07CGL00771700	3/24/07 – 3/24/08	Silverado	Centex

72. The Navigators Policies were endorsed to cover Centex as an “additional insured” with respect to liability arising out of each named insured’s work.

73. The Navigators Policies require Navigators to defend Centex against claims that create potential liability for covered property damage or bodily injury.

74. The Navigators Policies were in effect during J&L and Silverado's operations at the Developments.

The Scottsdale Policies

75. All Seasons performed work on homes at the Developments pursuant to written subcontracts that each of them entered into with Centex.

76. The subcontract required All Seasons to maintain commercial general liability insurance, and to name "Centex Homes, a Nevada general partnership, Centex Real Estate Corporation, a Nevada corporation, and the owner of the Site if other than Centex Homes, their respective officers, directors, partners, members and employees, as additional insureds" under those insurance policies.

77. All Seasons obtained the following commercial general liability policies from Scottsdale ("the Scottsdale Policies"):

Insurer	Policy Number	Policy Period	Named Insured	Additional Insured
Scottsdale	CLS1430237	01/22/07 – 01/22/08	All Seasons	Centex
Scottsdale	CLS1324419	01/22/08 – 01/22/09	All Seasons	Centex

78. The Scottsdale Policies were endorsed to cover Centex as an "additional insured" with respect to liability arising out of each named insured's work.

79. The Scottsdale Policies require Scottsdale to defend Centex against claims that create potential liability for covered property damage or bodily injury.

80. The Scottsdale Policies were in effect during All Season's operations at the Developments.

The St. Paul Policies

81. Premier performed work on homes at the Developments pursuant to written subcontracts that each of them entered into with Centex.

82. The subcontract required Premier to maintain commercial general liability

insurance, and to name “Centex Homes, a Nevada general partnership, Centex Real Estate Corporation, a Nevada corporation, and the owner of the Site if other than Centex Homes, their respective officers, directors, partners, members and employees, as additional insureds” under those insurance policies.

83. Premier obtained the following commercial general liability policies from St. Paul (“the St. Paul Policies”):

Insurer	Policy Number	Policy Period	Named Insured	Additional Insured
St. Paul	GL08100458	11/03/03 – 11/08/08	Premier	Centex

84. The St. Paul Policies were endorsed to cover Centex as an “additional insured” with respect to liability arising out of each named insured’s work.

85. The St. Paul Policies require St. Paul to defend Centex against claims that create potential liability for covered property damage or bodily injury.

86. The St. Paul Policies were in effect during Premier’s operations at the Developments.

The National Fire Policies

87. JP and Silverado performed work on homes at the Development pursuant to written subcontracts that each of them entered into with Centex.

88. The subcontract required JP and Silverado to maintain commercial general liability insurance, and to name “Centex Homes, a Nevada general partnership, Centex Real Estate Corporation, a Nevada corporation, and the owner of the Site if other than Centex Homes, their respective officers, directors, partners, members and employees, as additional insureds” under those insurance policies.

89. JP and Silverado obtained the following commercial general liability policies from National Fire (“the National Fire Policies”):

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Insurer	Policy Number	Policy Period	Named Insured	Additional Insured
National Fire	72LPS000460	3/24/06 – 3/24/07	Silverado	Centex
National Fire	72LPE697118	2/18/05 – 2/18/06	JP	Centex
National Fire	72LPE697186	2/18/06 – 2/18/07	JP	Centex

90. The National Fire Policies were endorsed to cover Centex as an “additional insured” with respect to liability arising out of each named insured’s work.

91. The National Fire Policies require National Fire to defend Centex against claims that create potential liability for covered property damage or bodily injury.

92. The National Policies were in effect during JP and Silverado’s operations at the Development.

The Ironshore Policy

93. Silverado performed work on homes at the Development pursuant to written subcontracts that each of them entered into with Centex.

94. The subcontract required Silverado to maintain commercial general liability insurance, and to name “Centex Homes, a Nevada general partnership, Centex Real Estate Corporation, a Nevada corporation, and the owner of the Site if other than Centex Homes, their respective officers, directors, partners, members and employees, as additional insureds” under those insurance policies.

95. Silverado obtained the following commercial general liability policy from Ironshore (“the Ironshore Policies”):

Insurer	Policy Number	Policy Period	Named Insured	Additional Insured
Ironshore	IRH00CCE0805001	3/24/08 – 3/24/09	Silverado	Centex

96. The Ironshore Policy was endorsed to cover Centex as an “additional insured” with respect to liability arising out of Silverado’s work.

97. The Ironshore Policy required Ironshore to defend Centex against claims that create potential liability for covered property damage or bodily injury.

98. The Ironshore Policy was in effect during Silverado's operations at the Development.

The Zurich Policies

99. Advanced Countertop performed work on homes at the Development pursuant to written subcontracts that each of them entered into with Centex.

100. The subcontract required Advanced Countertop to maintain commercial general liability insurance, and to name "Centex Homes, a Nevada general partnership, Centex Real Estate Corporation, a Nevada corporation, and the owner of the Site if other than Centex Homes, their respective officers, directors, partners, members and employees, as additional insureds" under those insurance policies.

101. Advanced Countertop obtained the following commercial general liability policies from Zurich ("the Zurich Policies"):

Insurer	Policy Number	Policy Period	Named Insured	Additional Insured
Zurich	SCP042972985	2/3/04-2/3/06	Advanced Countertop	Centex

102. The Zurich Policies were endorsed to cover Centex as an "additional insured" with respect to liability arising out of Advanced Countertop's work.

103. The Zurich Policies required Zurich to defend Centex against claims that create potential liability for covered property damage or bodily injury.

104. The Zurich Policies were in effect during Advanced Countertop's operations at the Development.

The Carlan Action

105. In or around June 2013, homeowners in the Development began forwarding pre-litigation notices of construction defects to Centex pursuant to NRS 40.645.

106. On or about February 20, 2016, homeowners in the Development filed a construction defect complaint entitled *William and Jennifer Carlan, et al. v. Centex Homes, et al.*, Second Judicial District Court, Washoe County, Nevada, Case No. CV16-00380 ("*Carlan*"), against Centex alleging, among other things, that homes in the Development were defectively and

1 negligently designed, engineered, and constructed and incorporated defective materials, and that
2 these defects caused property damage for which Centex is liable.

3 107. The *Carlan* complaint, NRS Chapter 40 notices, and expert reports produced in the
4 *Carlan* action allege that the work of Sierra, Ridido, Pinnacle, J&L, American, Mills, Cavallero,
5 Hanson, Republic, Sunworld, All Seasons, JP, Silverado, and Premier (collectively, the “Centex
6 Subcontractors”) caused property damage to the work of others.

7 108. The *Carlan* complaint, NRS Chapter 40 notices, and expert reports produced in the
8 *Carlan* action include allegations that create the potential that the property damage resulting from
9 the work of the Centex Subcontractors occurred during operations at the Development and while
10 each of the Defendants’ insurance policies was in place.

11 109. Centex provided to each of the defendant insurers copies of the *Carlan* complaint,
12 NRS Chapter 40 notices, and expert reports. The defendant insurers were legally obligated to
13 consider information contained in these materials, and any other information that a reasonable
14 investigation by the insurers would have disclosed, when making their decision whether to defend
15 Centex in the *Carlan* action.

16 110. Centex has incurred and will continue to incur significant costs to defend the
17 *Carlan* action, including, but not limited to, forensic, investigative, and repair costs; attorneys’
18 fees; and other expenses.

19 **Each of The Defendant Insurers Breaches its Duty to Defend Centex in Carlan**

20 111. Centex tendered the defense and indemnity of the *Carlan* claim to each of the
21 Defendant insurers on or about November 4, 2015.

22 112. On or about November 18, 2015, Lexington improperly denied Centex’s claim and
23 refused to defend Centex in the *Carlan* matter under the policies it issued to Sunworld.

24 113. On or about November 23, 2015, Financial Pacific improperly denied Centex’s
25 claim and refused to defend Centex in the *Carlan* matter under the policies it issued to Pinnacle.

26 114. On or about November 24, 2015, Lexington improperly denied Centex’s claim and
27 refused to defend Centex in the *Carlan* matter under the policies it issued to Republic.

28 115. On or about February 18, 2016, Interstate improperly denied Centex’s claim and

1 refused to defend Centex in the *Carlan* matter under the policies it issued to Mills.

2 116. On or about March 29, 2016, Financial Pacific improperly denied Centex's claim
3 and refused to defend Centex in the *Carlan* matter under the policies it issued to Sierra.

4 117. On or about April 28, 2016, Lexington improperly denied Centex's claim and
5 refused to defend Centex in the *Carlan* matter under the policies it issued to Hanson.

6 118. On or about May 13, 2016, St. Paul improperly denied Centex's claim and refused
7 to defend Centex in the *Carlan* matter under the policies it issued to Premier.

8 119. On or about June 23, 2016, First Specialty improperly denied Centex's claim and
9 refused to defend Centex in the *Carlan* matter under the policies it issued to J&L.

10 120. On or about June 30, 2016, Scottsdale improperly denied Centex's claim and
11 refused to defend Centex in the *Carlan* matter under the policies it issued to All Seasons.

12 121. On or about December 14, 2016, Financial Pacific improperly denied Centex's
13 claim and refused to defend Centex in the *Carlan* matter under the policies it issued to Riddo.

14 122. On or about December 23, 2016, Navigators improperly denied Centex's claim and
15 refused to defend Centex in the *Carlan* matter under the policies it issued to J&L.

16 123. On or about March 10, 2017, Lexington improperly denied Centex's claim and
17 refused to defend Centex in the *Carlan* matter under the policies it issued to Cavallero.

18 124. On or about January 18, 2019, Greenwich, after failing for more than three years to
19 even acknowledge Centex's tender, finally acknowledged its duty to defend Centex in the *Carlan*
20 matter under the policies it issued to American, but asserted that its duty to defend is limited to a
21 small share of Centex's defense costs.

22 125. National Fire improperly denied Centex's claim and refused to defend Centex in
23 the *Carlan* matter under the policies it issued to JP.

24 126. National Fire improperly denied Centex's claim and refused to defend Centex in
25 the *Carlan* matter under the policies it issued to Silverado.

26 127. Navigators improperly denied Centex's claim and refused to defend Centex in the
27 *Carlan* matter under the policies it issued to Silverado.

28 128. Ironshore improperly denied Centex's claim and refused to defend Centex in the

1 *Carlan* matter under the policies it issued to Silverado.

2 129. Pursuant to each of the Defendants' policies, each Defendant owes a duty to defend
3 Centex; specifically, this duty obligates each Defendant to fund Centex's defense by paying
4 attorneys' fees and litigation costs that Centex has incurred and will continue to incur defending
5 the *Carlan* action.

6 130. As a result of each Defendant's failure to acknowledge its duty to defend Centex
7 and to fund Centex's defense, Centex has been forced to fund its own defense of the *Carlan*
8 action. Centex has spent approximately \$500,000 doing so. And because the *Carlan* action is still
9 pending, Centex will continue to spend significant sums defending itself against the *Carlan* action.

10 **The Maples Action**

11 131. In or around September 2015, homeowners in the Silver Terraces development
12 began forwarding pre-litigation notices of construction defects to Centex pursuant to NRS 40.645.

13 132. On or about February 20, 2016, homeowners in the Silver Terraces development
14 filed a construction defect complaint entitled *Nicholas Maples, et al. v. Centex Homes, et al.*,
15 Second Judicial District Court, Washoe County, Nevada, Case No. CV16-00382 ("*Maples*"),
16 against Centex alleging, among other things, that homes in the Development were defectively and
17 negligently designed, engineered, and constructed and incorporated defective materials, and that
18 these defects caused property damage for which Centex is liable.

19 133. The *Maples* complaint, NRS Chapter 40 notices, and expert reports produced in the
20 *Maples* action allege that the work of Advanced Countertop, Cavallero, Dan Mills, J&L, Premier,
21 and Scarecrow (collectively, the "Centex Subcontractors") caused property damage to the work of
22 others.

23 134. The *Maples* complaint, NRS Chapter 40 notices, and expert reports produced in the
24 *Maples* action include allegations that create the potential that the property damage resulting from
25 the work of the Centex Subcontractors occurred during operations at the Development and while
26 each of the Defendants' insurance policies was in place.

27 135. Centex provided to each of the defendant insurers copies of the *Maples* complaint,
28 NRS Chapter 40 notices, and expert reports. The defendant insurers were legally obligated to

1 consider information contained in these materials, and any other information that a reasonable
2 investigation by the insurers would have disclosed, when making their decision whether to defend
3 Centex in the *Maples* action.

4 136. Centex has incurred and will continue to incur significant costs to defend the
5 *Maples* action, including, but not limited to, forensic, investigative, and repair costs; attorneys'
6 fees; and other expenses.

7 **Each of The Defendant Insurers Breaches its Duty to Defend Centex in *Maples***

8 137. Centex tendered the defense and indemnity of the *Maples* claim to each of the
9 Defendant insurers on or about September 14, 2015.

10 138. On or about January 5, 2016, Zurich improperly denied Centex's claim and refused
11 to defend Centex in the *Maples* matter under the policies it issued to Advanced Countertop.

12 139. On or about March 9, 2016, Lexington improperly denied Centex's claim and
13 refused to defend Centex in the *Maples* matter under the policies it issued to Cavallero.

14 140. On or about December 8, 2015, Interstate improperly denied Centex's claim and
15 refused to defend Centex in the *Maples* matter under the policies it issued to Dan Mills.

16 141. On or about September 25, 2015, First Specialty improperly denied Centex's claim
17 and refused to defend Centex in the *Maples* matter under the policies it issued to J&L.

18 142. On or about September 25, 2015, Navigators improperly denied Centex's claim and
19 refused to defend Centex in the *Maples* matter under the policies it issued to J&L.

20 143. On or about May 13, 2016, St. Paul improperly denied Centex's claim and refused
21 to defend Centex in the *Maples* matter under the policies it issued to Premier.

22 144. On or about September 18, 2016, Financial Pacific improperly denied Centex's
23 claim and refused to defend Centex in the *Maples* matter under the policies it issued to Scarecrow.

24 145. Pursuant to each of the Defendants' policies, each Defendant owes a duty to defend
25 Centex; specifically, this duty obligates each Defendant to fund Centex's defense by paying
26 attorneys' fees and litigation costs that Centex has incurred and will continue to incur defending
27 the *Maples* action.

28 146. As a result of each Defendant's failure to acknowledge its duty to defend Centex

1 and to fund Centex's defense, Centex has been forced to fund its own defense of the *Maples*
 2 action. Centex has spent approximately \$500,000 doing so. And because the *Maples* action is still
 3 pending, Centex will continue to spend significant sums defending itself against the *Maples*
 4 action.

5 **FIRST CAUSE OF ACTION**

6 **Breach of Contract**

7 (By Centex Against All Defendants)

8 147. Centex realleges the allegations contained in paragraphs 1 through 146, inclusive,
 9 and incorporates them by reference as though fully set forth herein.

10 148. Centex requested that each Defendant defend Centex against the *Carlan* and
 11 *Maples* claim as described more fully above. Centex has performed all obligations owing under
 12 each of the policies in connection with its tender of defense, and Centex has satisfied all relevant
 13 conditions precedent.

14 149. Each of the Defendants has failed to discharge its contractual duty to defend Centex
 15 against the *Carlan* and *Maples* claims. More particularly, each Defendant breached its contract by
 16 (1) failing to promptly respond to Centex's tenders, and (2) refusing to fully defend Centex, or
 17 even defend Centex at all.

18 150. As a direct and proximate result of Defendants' conduct as alleged in this
 19 Complaint, Centex has been damaged and will continue to be damaged in an amount to be proven
 20 at trial.

21 **SECOND CAUSE OF ACTION**

22 **Breach of the Implied Covenant of Good Faith and Fair Dealing**

23 (By Centex Against All Defendants)

24 151. Centex realleges the allegations contained in paragraphs 1 through 150, inclusive,
 25 and incorporates them by reference as though fully set forth herein.

26 152. Defendants owe Centex a duty of good faith and fair dealing, obligating Defendants
 27 to put Centex's interests equal with or ahead of their own interests and to do nothing to deprive
 28 Centex of policy benefits.

1 153. Rather than honor their obligations, Defendants have instead sought to protect their
2 own interests and have subordinated Centex's interests by refusing to discharge contractual duties
3 without reasonable grounds or good cause.

4 154. In addition, Defendants have acted with knowledge or reckless disregard of the lack
5 of reasonable grounds or good cause for their conduct.

6 155. Accordingly, Defendants have deprived Centex of its rights and benefits under their
7 policies. For example:

8 a. Pursuant to clearly applicable law, Defendants have a duty to promptly
9 investigate and respond to Centex's tenders and indicate whether they would defend Centex
10 against the *Carlan* and *Maples* claims. Defendants understand and are fully aware of this duty.
11 Despite their knowledge of this obligation, Defendants have failed to respond to Centex's tenders
12 in a timely fashion. On information and belief, these delays violate Defendants' own internal
13 policies. To further delay making coverage decisions and avoid assuming the financial burden of
14 defending Centex, on some occasions Defendants requested documents that Centex had already
15 supplied to Defendants so as to force Centex to continue defending itself and incur costs without
16 Defendants' support. Defendants delayed rendering coverage decisions in conscious disregard of
17 the risk that these delays would jeopardize Centex's ability to adequately defend itself against the
18 *Carlan* and *Maples* claims, and would jeopardize Centex's ability to settle those matters.
19 Defendants' decisions to delay responding to Centex's tenders were motivated by a desire to
20 unfairly enhance their own profits by avoiding contractual obligations and ignoring the contractual
21 rights and economic interests of Centex. Defendants acted in a deliberate and concerted fashion to
22 achieve this self-serving economic objective. Defendants' conduct in this regard tortiously
23 breaches the duty of good faith and fair dealing owed to Centex, and recklessly disregards
24 Centex's economic and property rights.

25 b. Pursuant to clearly applicable law, Defendants have a duty to defend
26 additional insureds, like Centex, for claims alleging potential for liability arising out of the work
27 or ongoing operations of their named insureds. Defendants understand and are fully aware of this
28 duty. Despite knowledge of this obligation, Defendants routinely attempt to avoid this obligation

by taking arbitrary and capricious coverage positions. More specifically, despite knowledge of the terms of their insurance policies, additional-insured endorsements, the relevant case law, and the facts alleged in *Carlan* and *Maples* actions, Defendants refused to acknowledge their duty to defend Centex against the *Carlan* and *Maples* claims, even though many of the Defendants readily acknowledged their duty to defend their named insureds in each of these cases. Defendants consistently and intentionally treat Centex and other additional insureds differently from their named insureds with respect to the thoroughness (or lack thereof) of their investigation, the coverage defenses they assert, and their willingness to acknowledge the duties they owe. Likewise, Defendants took coverage positions in the *Carlan* and *Maples* matters that are inconsistent with positions they took in other similar cases and situations. Defendants' decisions to deny or delay responding to Centex's tenders were motivated by a desire to enhance unfairly their own profits by avoiding contractual obligations and ignoring the contractual rights and economic interests of Centex. Defendants acted in a deliberate and concerted fashion to achieve this self-serving economic objective. Defendants' conduct in this regard tortiously breaches the duty of good faith and fair dealing owed to Centex, and recklessly disregards Centex's economic and property rights.

c. Pursuant to clearly applicable law, Defendants have a duty to fully defend Centex, as opposed to providing Centex only with a proportional or partial defense based on what the insurers argue is the limited liability of their named insureds. Defendants understand and are fully aware of this duty. Despite Defendants' knowledge that they have a duty to fully defend Centex against the *Carlan* and *Maples* claims pursuant to clearly applicable law, Defendants unreasonably refused to do so. These refusals were motivated by a desire to enhance unfairly Defendants' own profits by avoiding contractual obligations and ignoring the contractual rights and economic interests of Centex. Defendants acted in a deliberate and concerted fashion to achieve this self-serving economic objective. Defendants' conduct in this regard tortiously breaches the duty of good faith and fair dealing owed to Centex, and recklessly disregards Centex's economic and property rights.

156. Defendants' conduct as alleged in this Complaint is part of a pattern of unfair

1 claims practices intentionally engaged in by each of the Defendants to enhance unfairly their own
2 profits by avoiding contractual obligations and ignoring the contractual rights and economic
3 interests of Centex and other additional insureds. These systematic practices include (1) failing to
4 respond promptly to tenders from additional insureds, (2) wrongfully denying additional insureds
5 coverage owed under policies, and (3) refusing to supply a full defense to additional insureds as
6 required by law and instead trying to limit coverage obligations to funding only a small fraction of
7 the additional insured's defense.

8 157. As a direct and proximate result of Defendants' tortious breach of the duty of good
9 faith and fair dealing, Centex has suffered damages in an amount to be proven at trial, including
10 without limitation, the loss of use of operating capital diverted to defending the *Carlan* and
11 *Maples* actions, and legal costs incurred to obtain the benefits owed by the Defendants under their
12 insurance policies.

13 158. In addition, Defendants' conduct as alleged in this Complaint is despicable and has
14 been carried out in willful and conscious disregard of Centex's rights and economic interests, and
15 is malicious, fraudulent and oppressive. Accordingly, Defendants' conduct entitles Centex to
16 punitive damages.

17 159. Defendants' malicious, fraudulent, and oppressive conduct includes, for example:

18 a. As described above, Defendants were fully aware of their duty to promptly
19 investigate and respond to Centex's tenders and indicate whether Defendants would defend Centex
20 against the *Carlan* and *Maples* claims, but Defendants delayed responding to Centex's tenders and
21 ignored Centex's numerous requests they do so. Defendants knew that failing to promptly
22 respond to Centex's tenders and defend it would violate Centex's contractual rights and jeopardize
23 Centex's ability to successfully defend itself against the *Carlan* and *Maples* actions, but
24 Defendants did so anyway in willful and conscious disregard of Centex's rights.

25 b. As described above, Defendants are fully aware of their duty to defend
26 additional insureds, like Centex, against claims alleging potential liability arising out of the work
27 of their named insureds, but routinely attempt to avoid these obligations by treating additional
28 insured differently from named insureds. Defendants know this behavior violates the rights of

1 additional insureds, like Centex, but Defendants intentionally try to deprive additional insureds,
2 like Centex, of policy benefits in order to unfairly enhance their own profits.

3 c. As described above, Defendants were fully aware of their duty to fully
4 defend Centex as opposed to only providing a proportional or partial defense based on what they
5 contend is the limited liability of their named insureds. Defendants knew that failing to provide
6 Centex with a full defense would violate its contractual rights and may well harm Centex, but
7 Defendants nonetheless claimed their duties were limited, and refused to fully discharge their duty
8 to defend – and in most instances, refused to defend at all – in willful violation of their contractual
9 duties.

10 **THIRD CAUSE OF ACTION**

11 **Violations of Nevada's Unfair Claims Settlement Practices Action,**

12 **Nev. Rev. Stat. Ann. § 686A.310**

13 (By Centex Against All Defendants)

14 160. Centex realleges the allegations contained in paragraphs 1 through 159, inclusive,
15 and incorporates them by reference as though fully set forth herein.

16 161. Defendants' conduct constitutes a violation of one or more of the following sub-
17 sections of Nev. Rev. Stat. Ann. § 686A.310:

18 a. Failing to acknowledge and act reasonably promptly upon communications
19 with respect to claims arising under insurance policies.

20 b. Failing to adopt and implement reasonable standards for the prompt
21 investigation and processing of claims under insurance policies.

22 c. Failing to affirm or deny coverage of claims within a reasonable time after
23 proof of loss requirements have been completed and submitted by the insured.

24 d. Failing to effectuate prompt, fair and equitable settlements of claims in
25 which liability of the insurer has become reasonably clear.

26 e. Compelling insureds to institute litigation to recover amounts due under an
27 insurance policy by offering substantially less than the amounts ultimately recovered in actions
28 brought by such insureds when the insureds have made claims for amounts reasonably similar to

1 the amounts ultimately recovered.

2 f. On information and belief, Defendants have engaged in other conduct in the
3 handling of the *Carlan* and *Maples* claims that constitutes unfair practices under other provisions
4 of NRS 686A.310.

5 162. As a direct and proximate result of Defendants' violations of Nev. Rev. Stat. Ann.
6 § 686A.310, Centex has sustained damages in an amount within the jurisdictional limits of this
7 Court.

8 163. As a direct and proximate result of Defendants' violations of Nev. Rev. Stat. Ann.
9 § 686A.310, Centex has incurred attorneys' fees, court costs and other expenses in bringing this
10 action.

11 **FOURTH CAUSE OF ACTION**

12 **(Declaratory Relief)**

13 164. Centex realleges the allegations contained in paragraphs 1 through 162, inclusive,
14 and incorporates them by reference as though fully set forth herein.

15 165. An actual controversy has arisen and now exists between Centex, on the one hand,
16 and Defendants, on the other hand, in that Centex contends that under the Interstate, Lexington,
17 Federal, and Underwriters policies each Defendant owes a separate and independent duty to
18 promptly and fully defend Centex in the *Carlan* and *Maples* matters.

19 166. Centex is informed and believes that Defendants contend otherwise.

20 167. Centex desires a judicial determination as follows:

21 a. that each Defendant owes a separate and independent duty to defend Centex
22 against the *Carlan* and *Maples* matters;

23 b. that the scope of this duty is to provide Centex with an immediate and full
24 defense;

25 c. that the obligations of any one Defendant to provide Centex with an
26 immediate and full defense is not diminished or reduced when other Defendants owe Centex this
27 same duty.

28 168. A declaratory judgment is both proper and necessary so that the respective rights,

duties, and obligations of Centex and Defendants may be determined.

PRAYER

WHEREFORE, Centex prays for judgment against Defendants awarding Centex,

1. **FIRST CAUSE OF ACTION:**

- a. general and specific damages in an amount to be proven at trial;
- b. all costs and expenses at the full extent permitted by law;
- c. pre-judgment interest and post-judgment interest to the full extent permitted by law;
- d. attorneys' fees to the extent recoverable by applicable law; and
- e. such other and further relief as the Court deems fair and proper.

2. **SECOND CAUSE OF ACTION:**

- a. general and specific damages in an amount to be proven at trial;
- b. punitive damages at the full extent permitted by law;
- c. all costs and expenses at the full extent permitted by law;
- d. pre-judgment interest and post-judgment interest at the full extent permitted by law;
- e. attorneys' fees to the extent recoverable by applicable law; and
- f. such other and further relief as the Court deems fair and proper.

3. **THIRD CAUSE OF ACTION:**

- a. general and specific damages in an amount to be proven at trial;
- b. punitive damages at the full extent permitted by law;
- c. all costs and expenses at the full extent permitted by law;
- d. pre-judgment interest and post-judgment interest at the full extent permitted by law;
- e. attorneys' fees to the extent recoverable by applicable law; and
- f. such other and further relief as the Court deems fair and proper.

4. **FOURTH CAUSE OF ACTION:**

- a. declaratory relief as described above;

- b. all costs and expenses at the full extent permitted by law;
- c. pre-judgment interest and post-judgment interest at the full extent permitted by law;
- d. attorneys' fees to the extent recoverable by applicable law; and
- e. such other and further relief as the Court deems fair and proper.

JURY DEMAND

Centex hereby demands a trial by jury.

DATED: June 17, 2019

Respectfully submitted,
PAYNE & FEARS LLP

By /s/ Sarah J. Odia

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